

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Modesto, California

May 14, 2002 at 1:30 p.m.

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| 1. | 01-94107-A-13 CLARENCE C. MORSE III
MPD #1
GMAC MORTGAGE CORPORATION VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
4/23/02 [22] |
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Tentative Ruling: Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on February 26, 2002. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtor has failed to make at least four payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

The opposition filed by the debtors' attorney states that the allegedly missing post-petition payments have been made but does not provide any evidence of payment.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

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| 2. | 01-92509-A-13 BRIAN & CHRISTY DERUYTER
AC #1
CHASE MANHATTAN MORTGAGE CORP. VS. | CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
OR IN THE ALTERNATIVE, FOR
ADEQUATE PROTECTION
PART II
3/18/02 [25] |
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Tentative Ruling: The motion is denied without prejudice for lack of prosecution. This matter was continued at the request of the parties from April 9, 2002 to allow the movant to file a supplemental

declaration in support of its motion. Movant did not file a supplemental declaration.

No attorneys fees or costs are awarded.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

3.	02-90210-A-13 SABRINA EDMOND ASW #1 GUARANTY BANK VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/16/02 [10]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$9,700 prior to the receipt of payments) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on March 21, 2002. That plan provides for payment of the pre-petition arrears through the plan. There is evidence that the plan payments are in default due to the trustee's May 8, 2002 Notice of Default. The debtor's opposition states that she has become post-petition current in mortgage payments through money orders that she tendered to her attorney to forward to the creditor. The debtor's opposition, however, is unclear whether the amounts tendered include late fees.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtor (1) becomes completely post-petition current in mortgage payments, including any associated late fees by May 31, 2002 and (2) becomes completely current in chapter 13 plan payments to the trustee by May 28, 2002.

If the debtor fails to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtor's counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtor's counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor default in post-petition mortgage payments during the period June 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR

1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. If the debtor complies with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtor does not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

4.	00-94711-A-13 AMI & SHIU CHAND OHP #1 COUNTRYWIDE HOME LOANS, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY TO PERMIT FORECLOSURE UPON AND SALE OF REAL PROPERTY; OR IN THE ALTERNATIVE, ADEQUATE PROTECTION PART II 4/12/02 [46]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$31,600, including costs and prior to the receipt of payments) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on April 23, 2001. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. In their opposition, the debtors state they have tendered funds for the February, March and April payments. The debtors' opposition, however, is unclear whether the amounts tendered include late fees. The debtors further state they can pay the May payment by May 27, 2002 and the June payment within the grace period. Afterwards, they can maintain current payments to this creditor.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtors (1) pay the May 2002 mortgage payment including any associated late fees so that it is received by the

movant by May 27, 2002, (2) pay the June 2002 mortgage payment so that it is received by the movant within the grace period, if any, (3) become completely post-petition current in mortgage payments, including any associated late fees by June 1, 2002 and (4) pay the May and June 2002 chapter 13 plan payments to the trustee in a timely manner.

If the debtors fail to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtors, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments during the period July 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. If the debtors comply with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtors do not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

5.	01-94411-A-13 JOYCE L. GRANT AC #1 CHASE MANHATTAN MORTGAGE CORP. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY OR IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$20,000 prior to costs and the receipt of payments) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on January 22, 2002. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The debtor's opposition states that she has tendered \$3,000 to the creditor to become current through April 2002, and can pay the May mortgage payment, including late fees, by May 31, 2002.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtor (1) pays the May 2002 mortgage payment including any associated late fees so that it is received by the movant by May 31, 2002, (2) pays the June 2002 mortgage payment so that it is received by the movant within the grace period, if any, and (3) pays the May and June 2002 chapter 13 plan payments to the trustee in a timely manner.

If the debtor fails to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtor's counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtor's counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor default in post-petition mortgage payments during the period July 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. If the debtor complies with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtor does not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

6.	01-93813-A-13 MERCEDES HERNANDEZ SW #2 WFS FINANCIAL, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/18/02 [48]
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Tentative Ruling: The debtor filed her opposition to this Part II motion for relief from the automatic stay on May 10, 2002 at 9:21 a.m. The opposition was due May 7, 2002. Instead of filing on the fifth court day preceding the date of the hearing, the debtor filed on the second court day before the hearing. Thus, the debtor's opposition violated L.B.R. 9014-1, Part II (c). Accordingly, the debtor's attorney shall pay a \$150 monetary sanction for the failure to comply with the local rules regarding the time to file responses (\$50 each day the opposition was late) to be paid to "U.S. Treasury account # 322380."

Counsel shall provide a copy of the receipt of payment to the court, and counsel shall not be permitted to appear in any future matters in the Modesto Division until counsel provides such proof of payment or receives special permission from the court. See, *In re Hessinger & Associates*, 192 B.R. 211 (N.D.Cal. 1996).

Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The debtor lists the movant's collateral as a Class 2 claim in her current confirmed plan. There is no order confirming a modification of that plan under the terms set forth during the April 23, 2002 hearing on the debtor's motion to confirm a modified plan. Movant alleges that the debtor has defaulted in making at least two payments to the trustee and has failed to keep adequate insurance on the vehicle. That is cause for relief from the automatic stay. The court record reflects that trustee filed a notice of default, based on the debtor's delinquency in plan payments, on May 8, 2002.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtor without compensation and is depreciating in value.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees

and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

7.	01-94515-A-13 GERTRUDE M. WILMOT SJM #1 BANK OF AMERICA N.A. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/22/02 [30]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$16,000 prior to costs and the receipt of payments) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on March 21, 2002. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The opposition states that the debtor can become post-petition current within two weeks of the hearing.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtor (1) becomes completely post-petition current in mortgage payments, including any associated late fees by May 31, 2002, (2) pays the June 2002 mortgage payment so that it is received by the movant within the grace period, if any, and (3) pays the May and June 2002 chapter 13 plan payments to the trustee in a timely manner.

If the debtor fails to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtor's counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtor's counsel, the chapter 13 trustee and the holders of all junior liens.

The request for attorney fees is granted. If the debtor complies with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtor does not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

8.	01-92916-A-13	CHRISTOPHER HARDEN, SR. &	HEARING ON MOTION FOR
	PSP #1	KATHY A. HARDEN	RELIEF FROM AUTOMATIC STAY
	WESTERN SUNRISE VS.		PART II
			4/11/02 [29]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtors, the trustee, and all other parties in interest to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Nevertheless, because of the apparent equity in the collateral, the court will issue a tentative ruling.

Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on November 14, 2001. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least eight post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

9.	01-90517-A-13	JOHN & MELINDA LEONI	HEARING ON MOTION FOR
	MPD #1		RELIEF FROM AUTOMATIC STAY
	BANK OF AMERICA, F.S.B. VS.		PART II
			4/23/02 [66]

Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$95,900 prior to the receipt of payments) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on October 23, 2001. That plan provides for payment of the pre-petition arrears through the plan. There is evidence that the plan payments are in default due to the trustee's May 8, 2002 Notice of Default. The debtors' opposition states that they have tendered funds to become post-petition current through April, and will pay the May payment within the grace period.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtors (1) pay the May and June 2002 mortgage payments so that they are received by the movant within the grace period, if any, and (2) pay the May and June 2002 chapter 13 plan payments to the trustee in a timely manner.

If the debtors fail to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtors, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments during the period July 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. If the debtors comply with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtors do not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the

court's ruling.

10.	01-92718-A-13 WILLIAM A. NICHOLS ASW #1 GUARANTY BANK VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/11/02 [36]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$40,700 prior to the receipt of payments) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on October 16, 2001. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The debtor's opposition states that he can become post-petition current by June 15, 2002.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtor (1) pays the June 2002 mortgage payment so that it is received by the movant within the grace period, if any, (2) becomes completely post-petition current in mortgage payments, including any associated late fees by June 15, 2002 and (3) pays the May and June 2002 chapter 13 plan payments to the trustee in a timely manner.

If the debtor fails to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtor's counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtor's counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor default in post-petition mortgage payments during the period July 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the

restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. If the debtor complies with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtor does not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

11.	99-90820-A-13 ROBERT & GERALDINE LEE ASW #1 GUARANTY BANK VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/11/02 [68]
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Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 4001-1, Part II(a); and LBR 9014-1, Part II(a) and (c). However, because the debtors are pro se, the court will issue a tentative ruling.

Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on November 9, 1999. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least five post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's

ruling.

12.	01-92126-A-13	ANTONIO RODRIGUEZ, JR. & SW #1 ROSEMARY RODRIGUEZ WELLS FARGO FINANCIAL ACCEPTANCE VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/24/02 [31]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim including any attorney fees awarded herein. The debtors list the movant's collateral as a Class 2 claim in their confirmed plan. Movant alleges that the debtors have defaulted in making payments to the trustee. The trustee filed a notice of default on May 8, 2002. Furthermore, the movant alleges that the debtors have failed to maintain adequate insurance on the vehicle. That is cause for relief from the automatic stay.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtors without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

13.	01-94126-A-13	CHRISTOPHER & CAROLYN AC #1 MORALES CHASE MANHATTAN MORTGAGE CORP. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY OR IN THE ALTERNATIVE FOR ADEQUATE PROTECTION PART II 4/15/02 [36]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

Relief from the automatic stay is granted pursuant to 11 U.S.C. §

362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on April 9, 2002. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least three post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

14.	01-94428-A-13 ALICE M. PINE ASW #1 GUARANTY FEDERAL BANK VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/11/02 [18]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$28,450 prior to the receipt of payments) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on February 4, 2002. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The debtor's opposition seeks 30 days to become post-petition current.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtor (1) becomes completely post-petition current in mortgage payments, including any associated late fees, by the end of the grace period in June, 2002 and (2) pays the May and June 2002 chapter 13 plan payments to the trustee in a timely manner.

If the debtor fails to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtor's counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration

of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtor's counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtor default in post-petition mortgage payments during the period July 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. If the debtor complies with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtor does not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

15.	02-90429-A-13 CHARLES & ROBIN LAWRENCE RMD #1 AMERICREDIT FINANCIAL SERVICES, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/18/02 [15]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

Relief from the automatic stay is granted pursuant to 11 U.S.C. §

362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The debtors list the movant's collateral as a Class 3 (surrender) claim in their proposed, but unconfirmed, plan. Movant alleges that the debtors have defaulted in making four payments. That is cause for relief from the automatic stay.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtors without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

16.	00-91730-A-13 SONDR A JO REBEIRO ASW #3 GUARANTY FEDERAL BANK VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/11/02 [37]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as follows. Relief under 11 U.S.C. § 362(d)(2) is inappropriate because, even though the debtor has little to no equity, the debtor's schedules indicate that this is her residence and therefore necessary for effective rehabilitation. Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on August 29, 2000. The plan requires that the post-petition note installments be paid directly to the movant. The debtor's timely opposition shows that she intends to become current within 60 days. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. The evidence shows this is the movant's second motion for relief from stay on this property. Shortly after the debtor cured her arrears under the first motion, she became delinquent again, thus prompting this motion.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtor (1) pays the May 2002 mortgage payment including any associated late fees so that it is received by the movant by May 31, 2002, (2) pays all mortgage payments due to movant during the remainder of the plan term so that they are received by the movant within the grace period, if any, (3) becomes completely post-petition current in mortgage payments, including any associated late fees by July 15, 2002 and (4) pays the chapter 13 plan payments to the trustee in a timely manner during the remainder of the plan term.

If the debtor fails to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtor's counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not

occur. Any order granting relief shall be served on the debtor, debtor's counsel, the chapter 13 trustee and the holders of all junior liens.

The request for attorney fees is granted. If the debtor complies with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtor does not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

17.	01-94830-A-13 JOSEPH & MARIANNE SILVA M&B #2 THE LEADER MORTGAGE COMPANY VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/22/02 [18]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

Relief from the automatic stay is granted as to the creditor's first Deed of Trust pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The debtors' proposed plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least three post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order pertaining only to this motion that conforms to the court's ruling.

18.	01-94830-A-13 JOSEPH & MARIANNE SILVA M&B #3 THE LEADER MORTGAGE COMPANY VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/22/02 [22]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

Relief from the automatic stay is granted as to the creditor's second Deed of Trust pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The debtors' proposed plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least three post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order pertaining only to this motion that conforms to the court's ruling.

19.	01-93547-A-13 MICHAEL & SUSAN KERNS SW #1 WELLS FARGO FINANCIAL ACCEPTANCE VS.	CONT. HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART III 4/11/02 [29]
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Tentative Ruling: This matter was continued from continued from April 23, 2002 at the request of the parties to "see if the debtors can become current with their payments." No new documents having been filed in this matter, this court reissues its prior ruling:

Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of

it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim including any attorney fees awarded herein. The debtors list the movant's collateral as a Class 4 claim in their confirmed plan. Movant alleges that the debtors have defaulted in making one full and one partial post-petition payments totaling \$1,328.06. That is cause for relief from the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtor without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

20.	00-90148-A-13 JAMES & NANCY WILLIAMS MPD #1 BANK OF AMERICA MORTGAGE VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/23/02 [19]
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Tentative Ruling: Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on April 4, 2000. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least three post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

The opposition filed by the debtors' attorney does not provide evidence of payment or a proposal for the debtors to become post-petition current. An attorney's inability to reach his or her clients is not a substitute for proof of payment or a proposal for becoming current. If the debtors wish to avoid relief from the stay, they should make communication with their attorneys a priority.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

21. 00-94463-A-13 JERALD L. TINKLE
OHP #1
COUNTRYWIDE HOME LOANS, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
TO PERMIT FORECLOSURE UPON
AND SALE OF REAL PROPERTY;
OR IN THE ALTERNATIVE,
ADEQUATE PROTECTION
PART II
4/17/02 [16]

Tentative Ruling: Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on February 20, 2001. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtor has failed to make at least four payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

The opposition filed by the debtor's attorney does not provide evidence of payment or a proposal for the debtors to become post-petition current. An attorney's inability to reach his or her clients is not a substitute for proof of payment or a proposal for becoming current. If the debtors wish to avoid relief from the stay, they should make communication with their attorneys a priority.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

22. 01-94363-A-13 CYNTHIA ANNE DEBOARD
TJS #1
WORLD SAVINGS AND LOAN ASSN. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
PART II
4/16/02 [14]

Tentative Ruling: Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court

confirmed a plan on May 6, 2002. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtor has failed to make at least 14 pre-petition and 5 post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

The debtor's request for 90 days to refinance is denied. This is the debtor's second bankruptcy. On May 24, 2000, the debtor filed a chapter 13 bankruptcy with her husband (No. 00-92012). The chapter 13 plan in that case stated there was a \$8,800 in pre-petition delinquency to this creditor, and the plan was confirmed. The creditor's August 20, 2001, proof of claim in Case No. 00-92012 stated the debtors were delinquent in payments since September 1999. The creditor also filed a motion for relief from the automatic stay based on the debtor's post-petition default in payments, under which the court granted an order of adequate protection. The order, dated August 2, 2001, required the debtors to become post-petition current by September 17, 2001. Before that date, on September 13, 2001, the trustee filed a notice of default for plan payment delinquency. The September 13 notice of default was the fourth notice of default filed by the trustee in that case. The court dismissed the case on October 29, 2001, and the case closed December 14, 2001.

Shortly after case No. 00-92012 was dismissed (but before it was closed), on November 15, 2001, the debtor filed this bankruptcy without her husband. The confirmed plan in this case states there is a \$9,145 delinquency to this creditor. The trustee had previously filed, but withdrew, a motion to dismiss this case for default in plan payments.

Thus, the evidence in the court's records shows the debtor's strong pattern of non-payment to this creditor since September 1999. The debtor was previously given an order of adequate protection, and there is no evidence of the debtor's prior attempts to refinance this property. Consequently, her request for time to refinance the property (without evidence of any current efforts to do so) is a delaying tactic which will result in additional delinquencies to this creditor.

The movant's request for *in rem* relief is denied. The court understands movant's frustration arising from the debtor's history of non-payment. However, the movant has cited no authority for the proposition that the court can negate the plain language of 11 U.S.C. § 362(a).

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

23.	01-91865-A-13 STEPHEN & CANDIS ARTHUR AJH #1 COUNTRYWIDE HOME LOANS, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY TO PERMIT FORECLOSURE UPON AND SALE OF REAL PROPERTY; OR IN THE ALTERNATIVE, ADEQUATE PROTECTION PART II 4/17/02 [30]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as follows.

Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (approximately \$27,000 including costs and prior to the receipt of payments) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on August 28, 2000. That plan provides for payment of the pre-petition arrears through the plan. There is no evidence that the plan payments are in default. The debtors' opposition states that the alleged missed payments have been made. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan. Because of the debtors' payment, the plan is not in default. The movant is adequately protected by the confirmed plan and receipt of post-petition payments.

Adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments during the period June 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

Because the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

24.	01-90267-A-13 DONALD & REGINA CASNER RLE #4 DAIMLERCHRYSLER SERVICES NORTH AMERICA LLC VS. 4/24/02 [53]	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II
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Tentative Ruling: LBR 4001-1, Part II(d) requires that the movant provide 22 days notice pursuant to LBR 9014-1, Part II(b)(1). The movant filed an amended declaration and relief from automatic stay information sheet on May 2, 2002. Thus, the movant provided 12 days notice of the amended evidence in support of its motion. The movant's failure to provide full notice in compliance with LBR 9014-1, Part II(b)(1) of this amended information is treated as a waiver of the provisions of LBR 4001-1, Part II, and the motion is treated as a Part III motion.

Unless the debtors, the trustee, or any other party in interest appears in opposition to the motion, the court rules as follows:

Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The debtors were required to pay the movant directly pursuant to this court's May 17, 2001 order regarding the movant's prior motion for relief from the automatic stay on this property. Movant alleges that the debtors have defaulted in making two payments. That is cause for relief from the automatic stay.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtors without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

25.	99-90869-A-13 RONALD A. HOLLAND SB #1 WELLS FARGO BANK, N.A. VS.	CONT. HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 3/18/02 [99]
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Tentative Ruling: This motion was continued from April 9 to April 23, 2002 and then to this date to allow the parties an opportunity to resolve the issues raised by the creditor's motion.

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The debtor has the burden of proof on the issue of payment. 11 U.S.C. § 362(g). The debtor has not carried that burden. Cause for relief from stay exists because the debtor has not

established that he has paid the arrears on this assumed vehicle lease.

Because the movant has not established that it is the holder of an allowed secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

26.	99-95276-A-13 JOSE & PATRICIA ARECHIGA PSP #1 CHASE MANHATTAN MORTGAGE CORP. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/18/02 [31]
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Tentative Ruling: Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on January 21, 2000. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least four post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

The debtors' request for "sufficient time" to refinance the property is denied. The debtors do not have a motion to incur debt filed with the court. According to the moving papers and the debtors' schedules, the value of this property is more than \$26,500 less than the total of the liens against it. The debtors claim a new appraisal has increased the current value of the property, such that there is equity in the property. The appraisal is not attached, nor is there any other evidence of equity. Finally, the debtors' opposition does not propose to make payments to the creditor during any refinance process.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

27.	02-91278-A-13 LARRY A. DICKEY, SR. & SW #1 PATRICIA DICKEY	HEARING ON OBJECTION TO DEBTORS' CHAPTER 13 PLAN
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Disposition Without Oral Argument: The objection to the debtors' proposed plan is continued to June 18, 2002 at 1:30 p.m., without further notice. A continuance will allow all timely objections that may be filed against the plan to be heard concurrently. The debtors' section 341 meeting was scheduled for May 8, 2002.

The court will issue a minute order.

28. 02-91278-A-13 LARRY A. DICKEY, SR. & HEARING ON MOTION FOR
SW #2 PATRICIA DICKEY RELIEF FROM AUTOMATIC STAY
GMAC VS. PART II
4/22/02 [10]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle (a 1998 Chevrolet S10 pick-up), to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The debtors did not list this vehicle in their schedules nor provide for this obligation in their proposed plan. Movant alleges that the debtors have defaulted in making 13 pre-petition payments, and they have not maintained insurance on the vehicle. That is cause for relief from the automatic stay.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtors without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

29. 01-92379-A-13 MICHAEL & KIMBERLY GARCIA HEARING ON MOTION FOR
OHP #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS, INC. VS. TO PERMIT FORECLOSURE UPON
AND SALE OF REAL PROPERTY;
OR IN THE ALTERNATIVE,
ADEQUATE PROTECTION
PART II

Tentative Ruling: Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on July 31, 2001. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least three post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

The opposition filed by the debtors' attorney does not provide evidence of payment or a proposal for the debtors to become post-petition current.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

30.	00-90781-A-13 CHARLES & SHARON QUIRING PSP #1 CHASE MANHATTAN MORTGAGE CORP. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/11/02 [41]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as follows. Relief under 11 U.S.C. § 362(d)(2) is inappropriate because, even though the debtors have no equity, the debtors' schedules indicate that this is their residence and therefore necessary for effective rehabilitation. Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a modified plan on May 8, 2002. The modified plan cured arrears in post-petition payments to this creditor "through April 2002." Thus, there are no current post-petition arrears that would provide "cause" for relief from the automatic stay. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments during the period May 1, 2002 through October 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days

prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

31.	01-92684-A-13 ARTHUR RODRIGUEZ M&B #1 ALLIANCE MORTGAGE COMPANY VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/19/02 [14]
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Disposition Without Oral Argument: The creditor's motion is denied as moot because the case was dismissed on April 19, 2002. This matter is removed from the calendar.

32.	02-91184-A-13 LUCIA A. VALLADARES SW #1 WFS FINANCIAL, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART III 5/2/02 [24]
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Tentative Ruling: None. Appearances required.

33.	01-91787-A-13 TEODORO LOZANO, JR. & MPD #1 JULIA LOZANO WASHINGTON MUTUAL BANK VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/23/02 [19]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as follows. Relief under 11 U.S.C. § 362(d)(2) is inappropriate because, even though the debtors have no equity, the debtors' schedules indicate that this is their residence and therefore necessary for effective rehabilitation. Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on July 11, 2001. The plan requires that the post-petition note installments be paid directly to the movant. The debtors' timely opposition shows

that they need until May 24, 2002 to withdraw funds from their 401k to allow them to become post-petition current, including late fees. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtors (1) become completely post-petition current in mortgage payments, including the May 2002 payment and any associated late fees by May 24, 2002, (2) pay the June 2002 mortgage payment so that it is received by the movant within the grace period, if any, and (3) pay the May and June 2002 chapter 13 plan payments to the trustee in a timely manner.

If the debtors fail to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtors, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments during the period July 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The debtors have stated their intent to withdraw funds from a 401k plan. No motion to incur post-petition debt has been made, and this ruling does not constitute authority to incur post-petition debt.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

34.	01-93187-A-13	CHARLES M. WEEMS, JR. &	CONT. HEARING ON MOTION FOR
	PSP #1	DEBORAH WEEMS	RELIEF FROM AUTOMATIC STAY
	FIRSTPLUS FINANCIAL, INC. VS.		PART II

Tentative Ruling: Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on October 16, 2001. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtors have failed to make at least four post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

35.	01-93395-A-13 AARON & STEPHANIE LEHR ASW #2 FIRST NATIONWIDE MORTGAGE CORP. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/12/02 [25]
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Tentative Ruling: Relief from the automatic stay is denied; adequate protection is ordered as follows. Relief under 11 U.S.C. § 362(d)(2) is inappropriate because, even though the debtors have little to no equity, the debtors' schedules indicate that this is their residence and therefore necessary for effective rehabilitation. Relief under 11 U.S.C. § 362(d)(1) is inappropriate because the court confirmed a plan on October 24, 2001. The plan requires that the post-petition note installments be paid directly to the movant. The debtors' timely opposition states that they made the payments for February, March and April, including the payment of late fees for March and April. Once a plan or a modified plan is confirmed, the only ground for terminating the stay is a breach of the plan.

Adequate protection is ordered as follows: The automatic stay shall remain in effect if the debtors (1) become completely post-petition current in mortgage payments, including any associated late fees by May 31, 2002, (2) pay the June 2002 mortgage payment so that it is received by the movant within the grace period, if any, and (3) pay the May and June 2002 chapter 13 plan payments to the trustee in a timely manner.

If the debtors fail to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtors, debtors' counsel, the chapter 13 trustee and the holders of all junior liens.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments during the period July 1, 2002 through November 30, 2002. If the motion is restored to calendar: (A) the movant shall file a supplemental declaration and an updated Information Sheet in the Modesto Division not less than eleven calendar days prior to the hearing, (B) the movant shall serve notice of the restored motion (with copies of the supplemental declaration and updated Information Sheet) not less than eleven calendar days prior to the hearing, plus three days for mailing, (C) pursuant to LBR 1001-1(f), LBR 4001-1, Part I and LBR 9014-1, Part I(k), opposition, if any, shall be in writing and shall be filed in the Modesto Division and served not less than two court days prior to the hearing, (D) the act of restoring the motion to calendar shall constitute the movant's consent that it is movant's responsibility, if necessary, to obtain the opposition, if any, from the court's internet case information system and that movant's failure to do so for any reason, including without limitation computer problems, constitutes grounds to deny the restored motion and (E) pursuant to LBR 1001-1(f), no reply shall be permitted or considered.

The request for attorney fees is granted. If the debtors comply with the adequate protection order (and thus the movant does not foreclose on the property), since the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan. However, if the debtors do not comply with the adequate protection order (and thus the movant does foreclose on the property) the movant may enforce the fees award only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

36.	01-93495-A-13 CARL A. WALKER JEG #2 PACIFIC STATE BANK VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY PART II 4/19/02 [30]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1, Part II. The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v.

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

Relief from the automatic stay is granted pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The court confirmed a plan on January 11, 2002. The plan requires that the post-petition note installments be paid directly to the movant. Movant alleges that the debtor has failed to make at least seven post-petition payments. Failure to make regular monthly payments to a secured creditor as required by a confirmed chapter 13 plan can constitute cause to terminate the stay under § 362(d)(1). See Ellis v. Parr (In re Ellis), 60 B.R. 432, 435 (9th Cir. BAP 1985). The movant further alleges that the first and second deed of trust, both held by Bank of America, received relief from the automatic stay on April 15, 2002 and that the debtor has failed to maintain adequate insurance on the property. Those facts also establish cause for relief from the automatic stay.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

37.	01-93097-A-13 ERNESTO HIPOLITO, JR. & RLE #1 PATRICIA HIPOLITO TOYOTA LEASE TRUST VS.	HEARING ON MOTION FOR A NUNC PRO TUNC ORDER FOR RELIEF FROM AUTOMATIC STAY PART II 4/24/02 [83]
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CASE DISMISSED 4/22/02

Disposition Without Oral Argument: The creditor's motion is denied as moot because the case was dismissed on April 22, 2002. This matter is removed from the calendar.

38.	02-91298-A-13 LOUIS HODGES SSA #1 ROBERT KLINGER & WAYNE HAMLIN VS.	HEARING ON MOTION FOR DISMISSAL AND RELIEF FROM STAY 4/15/02 [7]
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Tentative Ruling: The creditor's motion is denied as moot because the case was dismissed in matter No 44 on this calendar.

The court will issue a minute order.

39.	02-90230-A-13 ANGELO & SANDRA JOHNSON RDG #1	HEARING ON MOTION FOR ORDER OF DISMISSAL UNDER 11 U.S.C. SECTION 1307 4/22/02 [23]
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Tentative Ruling: For the reasons stated in the trustee's motion, this case is dismissed for cause pursuant to 11 U.S.C. § 1307. The debtors have failed to make required payments, and Mrs. Sandra Johnson has failed to appear at two scheduled section 341 meetings. This is an unreasonable delay which is prejudicial to creditors. 11 U.S.C. §§ 1307(c)(1) & (c)(4).

The trustee shall submit an order that conforms to the court's ruling.

40.	02-91060-A-13 SHANNON LEE HUNTER	HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, CONVERSION OR IMPOSITION OF SANCTIONS FOR FAILURE OF DEBTOR AND/OR DEBTOR'S ATTORNEY TO FILE SUMMARY AND SCHEDULES A-J, STATEMENT OF FINANCIAL AFFAIRS, AND CHAPTER 13 PLAN 4/12/02 [12]
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Tentative Ruling: On March 21, 2002, the debtor filed a chapter 13 petition, and the clerk issued a notice of incomplete filing. On April 12, 2002, the clerk issued the above-entitled Order To Show Cause based on the debtor's failure to file the required summary, schedules A through J, statement of financial affairs and a chapter 13 plan. The debtor has not filed these documents as of May 9, 2002. Failure to file required documents is cause to dismiss a case.

This case shall remain pending if the debtor files these missing documents on or before May 24, 2002, as agreed to during the April 24, 2002 hearing on the trustee's motion to dismiss the case pursuant to § 1307. If she does not, the case will be dismissed without further notice or hearing.

The court will issue a minute order.

41.	02-90677-A-13 EVELYN L. DUKE	HEARING ON ORDER TO SHOW CAUSE RE DISMISSAL, AND/OR IMPOSITION OF SANCTIONS FOR FAILURE TO TENDER FEES 4/10/02 [12]
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Tentative Ruling: On March 26, 2002, the debtor filed a motion to convert her chapter 13 case to chapter 7. On April 10, 2002, the clerk's office issued the above-entitled Order To Show Cause based on the debtor's failure to file the required \$15.00 conversion fee. On April 16, 2002, the debtor paid the conversion fee. On April 17, 2002, the court granted the debtor's motion to convert.

Accordingly, the order to show cause is discharged, and this case shall remain pending because the debtor has shown cause by paying the conversion fee.

The court will issue a minute order.

42.	02-90481-A-13	RICHARD & LYND RDG #1	GUTIERREZ	HEARING ON MOTION FOR ORDER OF DISMISSAL UNDER 11 U.S.C. SECTION 1307 4/22/02 [13]
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Tentative Ruling: For the reasons stated in the trustee's motion, this case is dismissed for cause pursuant to 11 U.S.C. § 1307. The debtors have failed to make required payments and have failed to appear at any scheduled section 341 meetings. This is an unreasonable delay which is prejudicial to creditors. 11 U.S.C. §§ 1307(c)(1) & (c)(4).

The trustee shall submit an order that conforms to the court's ruling.

43.	02-90198-A-13	TIMOTHY DEL CARLO	HEARING ON ORDER TO SHOW CAUSE AND/OR IMPOSITION OF SANCTIONS FOR FAILURE TO TENDER FEES 4/10/02 [16]
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Tentative Ruling: On March 29, 2002, the debtor filed an amended schedule D. On April 10, 2002, the clerk's office issued the above-entitled Order To Show Cause based on the debtor's failure to file the required \$20.00 fee for filing an amended schedule.

As of May 9, 2002, the debtor has not paid the filing fee.

This case shall remain pending if the debtor pays the \$20.00 fee by May 20, 2002. If he does not, the case will be dismissed without further notice or hearing.

The court will issue a minute order.

44.	02-91298-A-13	LOUIS HODGES	HEARING ON MOTION FOR ORDER OF DISMISSAL UNDER 11 U.S.C. SECTION 1307 4/30/02 [17]
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Tentative Ruling: For the reasons stated in the trustee's motion, this case is dismissed for cause pursuant to 11 U.S.C. § 1307. The trustee correctly asserts that the debtor has failed to file a chapter 13 plan and has two active pending chapter 13 cases in this court (this case and case No. 01-90810). The court additionally notes that the debtor is delinquent in installment payments for the filing fee under an April 5, order, which required a payment of \$36.00 by May 6, 2002, and the debtor's petition in this case failed to disclose the existence of his prior pending case, No. 01-90810. These factors show an unreasonable delay which is prejudicial to creditors. 11 U.S.C. §§ 1307(c)(1) & (c)(3).

The trustee shall submit an order that conforms to the court's ruling.

45. 01-92702-A-13 CHARLES & PATRICIA GILLUM HEARING ON MOTION TO
VLC #3 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
4/19/02 [25]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, the debtors have failed to prove they can make the payments required under the modified plan by failing to make the April 2002 payment. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Murry-Hudson, 147 B.R. 960, 962 (Bankr. N.D. Cal. 1992).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

46. 02-90702-A-13 FELIX L. LONZANIDA, JR. HEARING ON OBJECTIONS
LJB #1 MINDA L. LONZANIDA TO CONFIRMATION OF CHAPTER 13
BENEFICIAL CALIFORNIA, INC. VS. PLAN FILED BY BENEFICIAL
CALIFORNIA, INC.
4/29/02 [12]

Disposition Without Oral Argument: This matter has been continued to May 21, 2002 at 1:30 p.m. by the objecting party's May 6, 2002 amended notice of hearing.

47. 99-93302-A-13 KATHERINE LAMBETH HEARING ON MOTION TO
CLH #2 SELL REAL PROPERTY
4/16/02 [37]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part

II(a) and (c). Therefore, this matter is resolved without oral argument.

The motion to sell the real property known as 1631 Polk Way, Stockton, California is granted. The sale is consistent with debtor's performance of the modified plan confirmed at matter 49 below.

Counsel for debtor shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

48. 99-93302-A-13 KATHERINE LAMBETH HEARING ON MOTION TO
CLH #3 WITHDRAW AS ATTORNEY OF
RECORD
4/16/02 [42]

Tentative Ruling: The motion is denied. The conclusory statement that "a substantial conflict has arisen between the debtor and counsel such that he cannot continue to represent her in this matter," without any further explanation, is insufficient to justify withdrawal.

49. 99-93302-A-13 KATHERINE LAMBETH HEARING ON MOTION TO
CLH #4 MODIFY CHAPTER 13 PLAN
4/16/02 [48]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee.

50. 02-90603-A-13 CHARLES & REGINA GRAVES HEARING ON OBJECTION
RLE #1 TO CONFIRMATION OF DEBTORS'
CHAPTER 13 PLAN AND TO THE
MOTION TO VALUE ITS COLLATERAL
FILED BY FORD MOTOR CREDIT
COMPANY
4/18/02 [21]

Disposition Without Oral Argument: This matter was continued prior to hearing by the moving party to June 18, 2002 at 1:30 p.m.

51. 02-90204-A-13 SALESH SHARMA HEARING ON MOTION FOR
JWC #2 1) ENLARGEMENT OF TIME PERIOD
TO FILE OBJECTION TO DEBTOR'S
CHP. 13 PLAN AND MOTION TO
VALUE COLLATERAL 2) RELIEF
FROM ORDER OVERRULING

Tentative Ruling: The motions are denied. Movant titles this motion as a motion for "relief from order overruling objection to debtor's chapter 13 plan and motion to value collateral." However movant has chosen to title this motion, it is a request to revoke an order confirming a chapter 13 plan and to hold a new confirmation hearing which considers movant's untimely filed objection. Revocation of an order of confirmation is solely governed by 11 U.S.C. § 1330 and the only ground stated under that statute is fraud. United States v. Edmonston, 99 B.R. 995, 997 (E.D. Cal. 1989). The Third Circuit Court of Appeals has addressed the exact issue raised by movant in In re Fesq, 153 F.3d 113 (3rd Cir. 1998), *cert denied sub nom Branchberg Plaza Associates, L.P. v. Fesq*, 526 U.S. 1018, 119 S.Ct. 1253, 143 L.Ed.2d 350 (1999). It found the plain language of Section 1330 to foreclose revocation for anything other than fraud. Bankruptcy Rule 9024 incorporating Federal Rule of Civil Procedure 60(b) cannot trump Section 1330 because "when Congress accorded the Supreme Court authority to promulgate the Bankruptcy Rules, it stated '[s]uch rules shall not abridge, enlarge, or modify any substantive right.' (28 U.S.C. § 2075). As a general matter, the Code defines the creation, alteration or elimination of substantive rights but the Bankruptcy Rules define the process by which these privileges may be effected." Fesq at 116 (Citation omitted). "Rule 9024 cannot grant a substantive right foreclosed by Section 1330(a)." In re Young, 237 B.R. 791, 802 (10th Cir. BAP 1999) *aff'd on other grounds* 237 F.3d 1168 (10th Cir. 2001).

In addition, Congress has given special attention to the finality of confirmation orders. "Over and above the plain thrust of the statutory language, we conclude that Congress intended that reading of Section 1330(a) because it protects the finality of Chapter 13 confirmation orders." Fesq at 119. Section 1330 read in conjunction with Section 1327, which provides that "the provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted or has rejected the plan," reinforces this argument.

The motion for "enlargement of time period to file objection to debtor's chapter 13 plan and motion to value collateral" fails for reasons identical to those above. Bankruptcy Rule 9006(b)(1)(2) subject to limitations not applicable here, states in relevant part that "when an act is required to be done at or within a specified period...by order of the court, the court for cause shown may at any time in its discretion...(2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." The effect of this court's enlarging the time within which to file objections to confirmation in this case would necessarily require revocation of the order of confirmation. As stated above, the Rules cannot abridge, enlarge or modify the substantive right set forth in Section 1330. The case cited by movant, Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, 507 U.S. 380, 113 S.Ct. 1489, 123

L.Ed.2d 74, is entirely distinguishable. In that case, the Supreme Court found that excusable neglect under 9006(b)(1) was cause to enlarge the time for filing proofs of claim in cases under Chapter 11 of the Code as allowed by Fed. R. Bankr. P. 3003(c)(3). Pioneer Investment was a case of a Rule modifying another Rule. It is not and cannot be a case about a Rule modifying a Code section. 28 U.S.C. § 2075.

The first two motions having been denied above, the motion to reset the hearing on objection to confirmation is denied as moot.

Counsel for debtor shall submit an order that conforms to the court's ruling.

52.	02-90006-A-13	DOUGLAS FRANCIS REPKO	CONT. HEARING ON OBJECTIONS TO PROPOSED CHAPTER 13 PLAN AND CONFIRMATION THEREOF FILED BY ATLANTIC MORTGAGE & INVESTMENT CORPORATION 2/26/02 [15]
	M&B #1		

Disposition Without Oral Argument: The objection to confirmation was withdrawn by the Creditor on May 10, 2002 and is removed from the calendar.

53.	01-92710-A-13	JAMES DARRON SANDERS	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF STANISLAUS CREDIT CONTROL SERVICE, INC. 4/11/02 [38]
	FW #1		

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the objection to the claim filed by Stanislaus Credit Control Service, Inc., on January 31, 2002 for \$732.27, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a non-governmental claim was November 13, 2001, and to file a government claim was December 30, 2001. Stanislaus Credit Control Service, Inc. filed its claim for \$732.27 on January 31, 2002.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33

(9th Cir. 1990).

Counsel for debtor shall submit an order that conforms to the court's ruling.

54.	01-92710-A-13 JAMES DARRON SANDERS FW #2	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF E. F. CASH DUDLEY, ESQ. 4/11/02 [41]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the objection to the claim filed by E.F. Cash Dudley, Esq., on July 31, 2001 for \$930.26, ("Claim") is resolved without oral argument.

The objection is sustained. The proof of claim does not conform with Fed. R. Bankr. P. 3001(d) and therefore does not constitute prima facie evidence of an allowed secured claim. 11 U.S.C. § 502. The Claim is disallowed as a secured claim and allowed in its entirety as a general unsecured claim.

Counsel for debtor shall submit an order that conforms to the court's ruling.

55.	01-94510-A-13 DARRELL COSTA FW #3	HEARING ON MOTION TO INCUR DEBT (OST) 4/25/02 [31]
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Tentative Ruling: LBR 9014-1, Part I (k) states: "When time for service is shortened to eleven (11) days of more, opposition shall be filed not later than two (2) court days prior to hearing." Movant's notice of hearing required opposition be filed five (5) court days before hearing. Because parties may not have been able to submit timely written opposition under the dates set forth in debtor's notice of hearing, the court will issue this as a tentative ruling.

The motion to incur debt is granted. Incurring the new debt is consistent with the debtor's performance of his confirmed plan.

Counsel for debtor shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

56.	01-94511-A-13 HERBERT VOS FW #1	HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN 4/16/02 [34]
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Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The modified plan complies with 11

U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee.

57.	99-94611-A-13 DN #1	STEVEN & MARIE FLETCHER	CONT. HEARING ON MOTION FOR APPROVAL OF PROPOSED SALE OF REAL PROPERTY OF THE ESTATE 3/13/02 [55]
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Tentative Ruling: This matter continued from April 23, 2002 so that debtors could file and serve copies of the sale contract, the estimated closing statement, and a declaration from the debtors addressing several issues requested by the trustee. On May 8, 2002, debtors filed the requested documents as well as a letter from the holder of the second deed of trust consenting to a short payoff. For this reason, the trustee's objection is overruled and the motion to sell is granted subject to the three conditions contained in the trustee's response. Sale of this real property is consistent with the debtors' performance of their confirmed plan.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

58.	02-90721-A-13 RLE #1	YSIDORE & LAURENE MARTINEZ	HEARING ON OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY DAIMLERCHRYSLER SERVICES NORTH AMERICA LLC 4/18/02 [14]
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Tentative Ruling: Secured Creditor Daimlerchrysler Services North America LLC, ("Creditor") objects to debtors' request for confirmation of their chapter 13 plan because it provides for interest on Creditor's collateral at less than the contract rate.

The objection is sustained. As to the interest rate, Creditor relies solely on its contract rate. Creditor fails to provide evidence of its current lending rate. The authority cited by the creditor (Smithwick v. Greentree Financial (In re Smithwick), 121 F.3d 211 (5th Cir. 1997)) is not binding authority in this circuit. Nevertheless, it holds that Creditor's current rate is the relevant rate. Id. at 214. It acknowledges that the contract rate is necessarily not a current rate. Id. However, based on the court's view of the economics of Chapter 13, Jones goes on to say that "it would be appropriate for bankruptcy courts to accept a plan utilizing the contract rate if the creditor fails to come forward with persuasive evidence that its current rate is in excess of the contract rate." Id. citing General Motors Acceptance Corporation v. Jones, 999 F.2d 63, 70-71 (3rd Cir. 1993). Neither Smithwick nor Jones require use of the contract rate as a "default rate." It only says doing so would be "appropriate." In applying a present value test under 11 U.S.C. § 1129(a)(9)(C), the Ninth Circuit Court of Appeals has stated that it is the "debtor's characteristics [that] determine the interest rate. The creditor's characteristics are irrelevant." In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503, 1506 (9th Cir. 1987).

This court is not bound to use the contract rate. The court believes that it is required to find a current compensatory rate - one that will, as of the effective date of the plan, provide the holder of the secured claim with the present value of its secured claim notwithstanding the receipt of payments over time. Evidence of the creditor's current rate is relevant in finding the appropriate rate, but the creditor has not provided that evidence here. However, neither have the debtors provided any evidence of a current rate. In such an absence, the court will revert to the contract rate of 18.00%. Because this rate differs from that specified in the proposed plan, the objection is sustained.

Because Creditor's interest rate objection is sustained, the motion to confirm is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Murry-Hudson, 147 B.R. 960, 962 (Bankr. N.D. Cal. 1992).

Because the collateral value exceeds movant's claim, the movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed to be paid through the plan.

Counsel for Creditor shall submit an order that conforms to the court's ruling.

59.	99-91021-A-13	F. SCOTT & DEBRAH	HEARING ON MOTION TO
	DN #6	ENGELMAN	MODIFY PLAN
			4/18/02 [50]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee.

60.	99-91021-A-13	F. SCOTT & DEBRAH	HEARING ON MOTION FOR
	DN #7	ENGELMAN	PERMISSION TO REFINANCE REAL
			PROPERTY
			4/18/02 [51]

Tentative Ruling: The motion to incur debt is granted subject to the inclusion of the trustee's three conditions. Incurring the new debt is consistent with the debtors' performance of their confirmed plan.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

61.	01-93827-A-13	DAVID NEWMAN	CONT. HEARING ON MOTION TO
	LT #1		DISMISS FOR BAD FAITH
			3/27/02 [61]

Disposition Without Oral Argument: This matter was continued from April 23, 2002 to see if the amended plan referred to in debtor's opposition was filed rendering this matter moot. On May 13, 2002, the debtor filed his amended plan. This motion is therefore denied as moot because it relates to the original chapter 13 plan filed in this case.

Counsel for debtor shall submit an order that conforms to the court's ruling.

62. 01-94629-A-13 LISA GUTIERREZ HEARING ON MOTION TO
FW #1 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
4/5/02 [16]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee.

63. 01-94629-A-13 LISA GUTIERREZ HEARING ON MOTION TO
FW #2 INCUR DEBT
4/5/02 [20]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, this matter is resolved without oral argument.

The motion to incur debt is granted. Incurring the new debt is consistent with the debtor's performance of his confirmed plan.

Counsel for debtor shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

64. 01-94629-A-13 LISA GUTIERREZ HEARING ON OBJECTION
FW #3 TO ALLOWANCE OF CLAIM OF
WELLS FARGO FINANCIAL
CALIFORNIA, INC.
4/5/02 [24]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, this matter is resolved without oral argument.

The proof of claim does not conform with Fed. R. Bankr. P. 3001(c) and therefore does not constitute prima facie evidence of an allowed secured claim. 11 U.S.C. § 502. The claim is disallowed as a secured claim and allowed in its entirety as a general unsecured claim.

Counsel for debtor shall submit an order that conforms to the court's ruling.

65. 01-94629-A-13 LISA GUTIERREZ HEARING ON OBJECTION
FW #4 TO ALLOWANCE OF CLAIM OF
MONEY MART
4/5/02 [28]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, this matter is resolved without oral argument.

The claim is for monies advanced by a check cashing service and it is not entitled to priority status. 11 U.S.C. § 507(a). The claim is disallowed as a priority claim and allowed as a general unsecured claim.

Counsel for debtor shall submit an order that conforms to the court's ruling.

66. 98-94031-A-13 PATRICK & SANDRA GREEN HEARING ON OBJECTION
FW #5 TO ALLOWANCE OF CLAIM OF
HOUSEHOLD FINANCE
4/8/02 [50]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, this matter is resolved without oral argument.

The claim is for monies lent by creditor as a personal loan and it is not entitled to priority status. 11 U.S.C. § 507(a). The claim is disallowed as a priority claim and allowed as a general unsecured claim.

Counsel for debtors shall submit an order that conforms to the court's ruling.

67. 01-91032-A-13 ERIC RENA HOUSTON HEARING ON OBJECTION
VLC #3 TO ALLOWANCE OF CLAIM OF
AFSA DATA CORP.
4/12/02 [36]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the objection to the claim filed by AFSA Data Corp., on April 2, 2002 for \$15,015.52, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a non-governmental claim was July 31, 2001, and to file a government claim was September 11, 2001. AFSA Data Corp. filed its claim for \$15,015.52 on April 2, 2002.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

Counsel for debtor shall submit an order that conforms to the court's ruling.

68.	98-96333-A-13 FW #7	JOSEPH & NANETTE GRAHAM	HEARING ON MOTION TO INCUR DEBT 4/4/02 [71]
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Tentative Ruling: The motion to incur debt is granted subject to the inclusion of the trustee's three conditions. Incurring the new debt is consistent with the debtors' performance of their confirmed plan.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

69.	00-92937-A-13 FW #2	EXIQUIO GUERRA. JR. & LETICIA GUERRA	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF HEILIG MEYER MASTER TRUST 4/11/02 [25]
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Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the objection to the claim filed by Heilig Meyers Master Trust, on November 27, 2001 for \$2,073.45, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a non-governmental claim was December 19, 2000, and to file a government claim was January 29, 2001. Heilig Meyers Master Trust filed its claim for \$2,073.45 on November 27, 2001.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

Counsel for debtors shall submit an order that conforms to the court's ruling.

70.	99-93040-A-13 FW #3	THOMAS GUILLEN, SR. & TONYA GUILLEN	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 4/4/02 [74]
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Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee.

71.	99-91241-A-13 VLC #3	RICK & SHIRLEY FREITAS	HEARING ON MOTION TO TRADE IN CURRENT VEHICLE AND A MOTION TO INCUR FURTHER INDEBTEDNESS FOR THE PURCHASE OF A VEHICLE (OST) 4/23/02 [29]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part I(k). Therefore, this matter is resolved without oral argument.

The motion to incur debt is granted. Incurring the new debt is consistent with the debtor's performance of his confirmed plan.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

72.	98-94553-A-13 ALC #5	KENNETH & ROBYN JOHNSON	HEARING ON MOTION TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION 4/10/02 [88]
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Tentative Ruling: The trustee's objections are overruled provided that the debtors provide for a 100% dividend to class 7 claims and reduce the plan term to 48 months in the Order confirming plan. Subject to those modifications, the motion to confirm is granted. With those two additions, the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee.

73.	97-91654-A-13 VLC #3	KENNETH & DEBORAH PLASTER	HEARING ON MODIFICATION OF DEBTORS' CONFIRMED CHAPTER 13 PLAN 4/12/02 [82]
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Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, the debtors are delinquent on plan payments under the proposed modified plan. The proposed plan is therefore not feasible. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Murry-Hudson, 147 B.R. 960, 962 (Bankr. N.D. Cal. 1992).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

74.	98-91460-A-13 SAS #11	WILLIAM & KATHERINE SCHIETINGER	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 4/9/02 [35]
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Tentative Ruling: The trustee's objection is overruled provided that the debtors provide for the full secured claim of American General Finance in the amount of \$809.33 in the Order confirming plan. Subject to that modification, the motion to confirm is granted. With that addition, the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee.

75.	01-93263-A-13 FW #1	WILLIE KINNEY, JR.	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF THE FRANCHISE TAX BOARD 4/11/02 [11]
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Disposition Without Oral Argument: The objection to claim was withdrawn by debtor on May 3, 2002 and is removed from the calendar.

76.	01-93263-A-13 FW #2	WILLIE KINNEY, JR.	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF FORD MOTOR CREDIT COMPANY 4/11/02 [14]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local

rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, this matter is resolved without oral argument.

The claim is for a deficiency balance from a vehicle loan where the collateral was repossessed pre-petition. The claim is not entitled to priority status. 11 U.S.C. § 507(a). The claim is disallowed as a priority claim and allowed as a general unsecured claim.

Counsel for debtors shall submit an order that conforms to the court's ruling.

77. 98-91563-A-13 MARIA TERESA PEREZ HEARING ON MOTION TO
VLC #3 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
4/12/02 [32]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee.

78. 02-90564-A-13 MARCEL VOS HEARING ON MOTION TO
FW #1 CONFIRM AMENDED CHAPTER 13
PLAN
4/16/02 [14]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The amended plan complies with 11 U.S.C. §§ 1322(a) & (b) and 1325(a).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee.

79. 02-90768-A-13 BEATRICE GARCIA HEARING ON MOTION TO
FW #1 CONFIRM AMENDED CHAPTER 13
PLAN
4/22/02 [13]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, the debtor is delinquent on plan payments under the proposed plan. The debtor has yet to make any plan payments to the trustee. The proposed plan is therefore not feasible. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Murry-Hudson, 147 B.R. 960, 962 (Bankr. N.D. Cal. 1992).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

80. 00-91677-A-13 GREG & LISA CARTER HEARING ON MOTION TO
FW #3 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
4/12/02 [38]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b) and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee.

81. 00-93081-A-13 ANNIE P. ALBERT HEARING ON OBJECTION
FW #4 TO ALLOWANCE OF CLAIM OF
SHERMAN ACQUISITION LP DBA
RESURGENT ACQUISITION
TRANSFERRED FROM PROVIDIAN
NATIONAL BANK
4/4/02 [49]

Disposition Without Oral Argument: The failure of the creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the matter is resolved without oral argument.

The objection is sustained. The debtor questions the validity and nature of this claim. A proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden.

Accordingly, the objection is sustained and the claim is disallowed except to the extent already paid by the trustee.

Counsel for debtor shall submit an order that conforms to the court's ruling.

82. 00-93081-A-13 ANNIE P. ALBERT HEARING ON OBJECTION
FW #5 TO ALLOWANCE OF CLAIM OF
B-HOLD, L.L.C., TRANSFERRED
FROM MIDLAND CREDIT
MANAGEMENT SUCCESSOR IN

Disposition Without Oral Argument: The failure of the creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the matter is resolved without oral argument.

The objection is sustained. The debtor questions the validity and nature of this claim. A proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. In addition, the proof of claim does not conform with Fed. R. Bankr. P. 3001(c) because there is no evidence of the writing upon which this claim is based.

Accordingly, the objection is sustained and the claim is disallowed except to the extent already paid by the trustee.

Counsel for debtor shall submit an order that conforms to the court's ruling.

83. 01-90384-A-13 FREDERICK & PATTI PAULINO HEARING ON MOTION FOR
TLC #1 CONFIRMATION OF PROPOSED
FIRST AMENDED PLAN
4/23/02 [61]

Disposition Without Oral Argument: This matter was continued prior to hearing by the moving part to June 4, 2002 at 1:30 p.m.

84. 02-90584-A-13 SONNY & ZENAIDA HERRERA HEARING ON OBJECTIONS
M&B #1 TO PROPOSED CHAPTER 13 PLAN
AND CONFIRMATION THEREOF FILED
BY HOMESIDE LENDING, INC.
4/15/02 [21]

Tentative Ruling: The objections to confirmation of debtors' chapter 13 plan are overruled as untimely. Pursuant to General Order 01-02, "An objection to the plan and/or the motion shall be filed no later than 14 days after the conclusion of the meeting of creditors held pursuant to §341(a) of the Bankruptcy Code. Further, the party filing the objection shall set if for hearing not later than 45 days following the conclusion of the meeting of creditors." (G.O. 01-02, ¶ 3(b)) Creditor Homeside Lending, Inc., filed its objections nineteen (19) days after the Section 341 meeting concluded on March 27, 2002. Creditor also scheduled this hearing forty-eight (48) days after the March 27, 2002 meeting of creditors. Finally, Creditor only provided

fifteen days notice of this hearing to debtors' attorney in violation of Local Bankruptcy Rule 9014-1, Part II(b). See Fed. R. Bankr. P. 3015(f), 9014 and 7004(b)(9).

Counsel for debtors shall submit an order that conforms to the court's ruling.

85. 01-92385-A-13 RICHARD W. HARLESS HEARING ON OBJECTION
SPM #1 TO ALLOWANCE OF CLAIM OF
THE FRANCHISE TAX BOARD
4/10/02 [14]

Disposition Without Oral Argument: The objection to claim was withdrawn by debtor on May 9, 2002 and is removed from the calendar.

86. 01-92385-A-13 RICHARD W. HARLESS HEARING ON OBJECTION
SPM #2 TO ALLOWANCE OF CLAIM OF
THE INTERNAL REVENUE SERVICE
4/10/02 [17]

Disposition Without Oral Argument: The objection to claim was withdrawn by debtor on May 9, 2002 and is removed from the calendar.

87. 01-92385-A-13 RICHARD W. HARLESS HEARING ON MOTION TO
SPM #3 MODIFY CHAPTER 13 PLAN
4/10/02 [21]

Tentative Ruling: The trustee's objections are overruled. On April 22, 2002 and April 29, 2002, the Internal Revenue Service and the Franchise Tax Board filed amended claims corresponding to the treatment listed in the withdrawn objections to claim at matters 85 and 86. These amended claims satisfy the trustee's objections. Therefore, the motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b) and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee.

88. 01-93285-A-13 JOSE CAMACHO HEARING ON OBJECTION
FW #1 TO ALLOWANCE OF CLAIM OF
SAUL ZARAGOSA
4/11/02 [20]

Disposition Without Oral Argument: The failure of the creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the matter is resolved without oral argument.

The objection is sustained. The debtor questions the validity and nature of this claim. A proof of claim is prima facie evidence of the

validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden.

Accordingly, the objection is sustained and the claim is disallowed except to the extent already paid by the trustee.

Counsel for debtor shall submit an order that conforms to the court's ruling.

89. 99-91486-A-13 LARRY SMALLEY HEARING ON MOTION TO
FW #4 MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
4/16/02 [67]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee.

90. 00-93287-A-13 JOHN & DEIDRA MCCARTHY HEARING ON MOTION TO
FW #4 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
4/19/02 [63]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, the debtors are delinquent on plan payments under the proposed modified plan. The proposed plan is therefore not feasible. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Murry-Hudson, 147 B.R. 960, 962 (Bankr. N.D. Cal. 1992).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

91. 01-90888-A-13 RUSSELL & DEBRA GILES HEARING ON MOTION TO
DN #1 MODIFY PLAN
4/18/02 [41]

Tentative Ruling: The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. §§ 1325(a)(1) & 1322(a)(2) and 1325(a)(5). Specifically, the plan (1) fails to provide for the secured claim of the IRS (\$20,820.97); (2) fails to provide for the

secured claim of the Franchise Tax Board (\$4,657.56); (3) fails to provide for the priority claim of the Franchise Tax Board (\$1,067.46) (2000 taxes); (4) fails to provide for the entire priority claim of the IRS (\$21,873.15); and (5) fails to provide for the entire priority claim of the Franchise Tax Board (\$1,866.95) (1997-99 taxes). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Murry-Hudson, 147 B.R. 960, 962 (Bankr. N.D. Cal. 1992).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

92.	02-90288-A-13 SPS #1	STEDMAN QUARTERMAINE & LYNNETTE PORTERFIELD	CONT. HEARING ON OBJECTIONS TO PROPOSED FIRST AMENDED CHAPTER 13 PLAN AND CONFIRMATION THEREOF FILED BY BANK OF ALAMEDA 3/22/02 [18]
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Tentative Ruling: Secured Creditor Bank of Alameda, ("Creditor") states two objections to the request for confirmation of debtors' chapter 13 plan. Creditor argues: (1) debtors' plan provides for interest on Creditor's collateral at a rate different from the contract rate; and (2) the plan fails to provide for the service contract. The court will address each objection.

(1) Interest rate. Creditor objects because the plan proposes to pay interest on Creditor's arrearage claim at an amount less than the contract rate. On May 6, the debtors consented to paying Creditor the contract rate of 18.99%. This objection is therefore overruled provided that debtors include payment of Creditor's arrears claim at 18.99% interest in the Order confirming plan.

(2) Service Contract. This objection is overruled. The service contract is an executory contract. Executory contracts are dealt with in Part II(D) of the proposed plan which provides: "Any executory contracts or unexpired leases not listed in the table below are rejected." Debtor lists nothing in the specified table. Therefore the debtors provide for the contract by rejecting it.

Creditor's objections having been overruled and no other timely objections to confirmation having been received, the motion to confirm debtors' chapter 13 plan is granted. Subject to inclusion of the Interest rate change in the Order confirming plan, the amended plan complies with 11 U.S.C. §§ 1322(a) & (b) and 1325(a).

The motion to value the collateral of Drive is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The respondent's collateral, a 1999 Ford Windstar, had a value of \$14,000.00 on the date of the petition. \$14,000.00 of its claim is an allowed secured claim. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

The motion to value the collateral of Dunhill Furniture is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The respondent's collateral, a living room and a dining room set, had a value of \$300.00 on the date of the petition. \$300.00 of its claim is

an allowed secured claim. The remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee.

93.	01-94295-A-13 HOANG NGUYEN FW #1	HEARING ON MOTION TO CONFIRM AMENDED CHAPTER 13 PLAN 4/15/02 [33]
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Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry his burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, the debtor is delinquent on plan payments under the proposed modified plan. The proposed plan is therefore not feasible. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Murry-Hudson, 147 B.R. 960, 962 (Bankr. N.D. Cal. 1992).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

94.	01-92399-A-13 KEITH & CYNTHIA HOOKS FW #2	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF WELLS FARGO FINANCIAL CALIFORNIA, INC. 4/11/02 [25]
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Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the objection to the claim filed by Wells Fargo Financial California, Inc., on July 19, 2001 for \$902.70, ("Claim") is resolved without oral argument.

The objection is sustained. The proof of claim does not conform with Fed. R. Bankr. P. 3001(c) and therefore does not constitute prima facie evidence of an allowed secured claim. 11 U.S.C. § 502. The Claim is disallowed as a secured claim and allowed in its entirety as a general unsecured claim.

Counsel for debtor shall submit an order that conforms to the court's ruling.